

Westlaw

85 Fed.Appx. 123

85 Fed.Appx. 123, 2003 WL 23033727 (C.A.10 (Kan.))

(Not Selected for publication in the Federal Reporter)

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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1)

United States Court of Appeals,
Tenth Circuit.
Chris Allen BROWNFIELD, Plaintiff-Appellant,
v.

Carla J. STOVALL, Kansas State Attorney; Lynn Fields, Retired Crawford County Sheriff; Sandy Horpon, Acting Crawford County Sheriff; Donald R. Noland, Kansas Attorney at Law, in their official and individual capacities, Defendants-Appellees.
No. 03-3099.

Dec. 30, 2003.

Background: Kansas state prisoner proceeding pro se brought civil rights action, claiming a host of constitutional violations arising out of state's alleged failure to honor his plea agreement. The United States District Court dismissed the action for failure to state a claim, and prisoner appealed.

Holdings: The Court of Appeals, Seymour, J., held that:

- (1) to the extent prisoner was seeking to challenge execution of his Kansas sentence, he first needed to proceed on petition for a writ of habeas corpus after first exhausting available state court remedies;
- (2) to the prisoner sought to challenge validity of his sentence based on new evidence, such a claim should have been raised in a writ for habeas corpus;
- (3) prisoner's rights were not violated under Kansas Agreement on Detainers Act;
- (4) Kansas statute did not require that prisoner be relinquished to Oklahoma so that he could serve his

sentences concurrently in that state;

(5) prisoner did not have constitutional right to compel his return to Oklahoma by virtue of Kansas' Uniform Criminal Extradition Act; and

(6) absent showing that prisoner's continued confinement in Kansas had been overturned by state tribunal or executive order or called into question by issuance of writ of habeas corpus, prisoner could not state colorable claim for damages under civil rights law.

Affirmed.

West Headnotes

[1] Civil Rights 78 1311

78 Civil Rights

78III Federal Remedies in General

78k1306 Availability, Adequacy, Exclusivity, and Exhaustion of Other Remedies

78k1311 k. Criminal Law Enforcement; Prisons. Most Cited Cases

Civil Rights 78 1319

78 Civil Rights

78III Federal Remedies in General

78k1314 Adequacy, Availability, and Exhaustion of State or Local Remedies

78k1319 k. Criminal Law Enforcement; Prisons. Most Cited Cases

To the extent Kansas state prisoner, who was bringing civil rights case against state officials, was seeking to challenge execution of his Kansas sentence, he first needed to proceed on petition for a writ of habeas corpus after first exhausting available state court remedies. 28 U.S.C.A. § 2241; 42 U.S.C.A. § 1983.

[2] Civil Rights 78 1311

78 Civil Rights

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78III Federal Remedies in General

78k1306 Availability, Adequacy, Exclusivity, and Exhaustion of Other Remedies

78k1311 k. Criminal Law Enforcement; Prisons. Most Cited Cases

To the extent Kansas state prisoner, who was bringing civil rights case against state officials, sought to challenge validity of his sentence based on new evidence which allegedly proved civil rights defendants conspired to mislead and defraud him about his return to Oklahoma to serve his sentences concurrently, such a claim should have been raised in a writ for habeas corpus, assuming prisoner first received permission from Court of Appeals to file successive habeas corpus petition. 28 U.S.C.A. §§ 2244(a)(b)(3)(A), 2254; 42 U.S.C.A. § 1983.

[3] Extradition and Detainers 166 ↪54

166 Extradition and Detainers

166II Detainers

166k53 Jurisdictions, Proceedings, Persons, and Offenses Involved

166k54 k. Fugitives and Escapees. Most Cited Cases

Pro se Kansas state prisoner's rights were not violated under Kansas Agreement on Detainers Act when Oklahoma authorities submitted detainer to Kansas authorities for prisoner's arrest and return to Oklahoma; Kansas Agreement on Detainers Act applied to "detainers based on untried indictments, informations or complaints," and although Oklahoma issued detainer for prisoner, it was for his arrest and return as escapee to resume service of his Oklahoma sentence, not detainer for any untried indictments, informations or complaints against him. K.S.A. 22-4401.

[4] Extradition and Detainers 166 ↪58

166 Extradition and Detainers

166II Detainers

166k58 k. Custody, Transfer, and Return of Prisoner. Most Cited Cases

Kansas statute did not require, pursuant to the Kansas Agreement on Detainers Act, that Kansas state prisoner to be relinquished to Oklahoma so that he could serve his sentences concurrently in that state; Kansas statute spoke in permissive as opposed to mandatory terms regarding Kansas' obligation to return defendant sentenced in its state courts to the custody of another jurisdiction so that the defendant could serve his sentence in that jurisdiction concurrent with his Kansas sentence. K.S.A. 21-4608(8) (Supp.1985).

[5] Extradition and Detainers 166 ↪24

166 Extradition and Detainers

166I Extradition

166I(B) Interstate

166k23 Authority and Duty to Demand or Deliver Persons Accused

166k24 k. In General. Most Cited Cases
 Kansas state prisoner did not have constitutional right to compel his return to Oklahoma by virtue of Kansas' Uniform Criminal Extradition Act, despite fact that Oklahoma authorities submitted detainer to Kansas authorities for his arrest and return to Oklahoma, where he failed to proffer any evidence that Oklahoma made an executive demand to the governor of Kansas for his return to Oklahoma, which was required by the Kansas statute. K.S.A. 2-2701, et seq.

[6] Civil Rights 78 ↪1095

78 Civil Rights

78I Rights Protected and Discrimination Prohibited in General

78k1089 Prisons

78k1095 k. Transfer. Most Cited Cases
 Absent showing that Kansas state prisoner's continued confinement in Kansas had been overturned by state tribunal or executive order or called into question by issuance of writ of habeas corpus, prisoner could not state colorable claim for damages under

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civil rights law based on alleged violation of his constitutional rights, which allegedly occurred when Kansas allowed Oklahoma authorities to submit detainer for his arrest and return to Oklahoma, which was allegedly in violation of his plea agreement in which Kansas agreed not to oppose concurrent service of his Kansas and Oklahoma sentences. 42 U.S.C.A. § 1983.

*125 Chris Allen Brownfield, Hutchinson, KS, for Plaintiff-Appellant.

Phill D. Kline, Office of the Attorney General, State of Kansas, Topeka, KS, for Defendants-Appellees.

Before SEYMOUR, MURPHY, and O'BRIEN, Circuit Judges.

ORDER AND JUDGMENT^{FN*}

FN* After examining appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R.App. P. 34(a)(2) and 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, or collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

SEYMOUR, Circuit Judge.

**1 [1][2] Chris Brownfield, a Kansas state prisoner proceeding *pro se*, brought an action under 42 U.S.C. § 1983, claiming a host of constitutional violations arising out of the state of Kansas' alleged

failure to honor the terms of a plea agreement entered into with Mr. Brownfield. The district court dismissed Mr. Brownfield's action for failure to state a claim, and he appeals. We liberally construe Mr. Brownfield's pleadings, *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), and affirm.

Mr. Brownfield is currently incarcerated in Kansas, where he is serving a sentence imposed by the Kansas courts in 1986. His Kansas conviction and sentence were the result of crimes he committed there after he escaped from an Oklahoma prison where he was serving a twenty year sentence. In the Kansas proceeding, Mr. Brownfield entered into a plea agreement in which the state agreed not to oppose concurrent service of Mr. Brownfield's Kansas and Oklahoma sentences. During sentencing, however, the court made clear to Mr. Brownfield that any sentence it imposed would not bind the Oklahoma courts, and that it had no authority over what steps the state of Oklahoma might or might not take to reacquire Mr. Brownfield for completion of his Oklahoma sentence. Oklahoma authorities did submit a detainer to Kansas authorities for Mr. Brownfield's arrest and return to Oklahoma, but the record does not reflect that Oklahoma took any further action to obtain custody of Mr. Brownfield.

Our court previously rejected Mr. Brownfield's habeas corpus petition under 28 U.S.C. § 2254 in which he challenged the validity of his Kansas plea agreement and sentence. *Brownfield v. Hannigan*, 1996 WL 364589 (10th Cir. June 28, 1996) (unpublished). Here, Mr. Brownfield again challenges the validity of his plea agreement and sentence, this time under section 1983, seeking damages and mandamus relief to effect his concurrent sentence. The district court dismissed Mr. Brownfield's action under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim, but granted his motion to proceed on appeal without payment of an initial *126 partial filing fee, 28 U.S.C. § 1915(a), (b).^{FN1} We review *de novo*. *Perkins v. Kansas*

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Dep't of Corr., 165 F.3d 803, 806 (10th Cir.1999).

FN1. We remind Mr. Brownfield of his obligation to continue making partial payments of the appellate filing fee until the entire fee is paid.

The district court dismissed Mr. Brownfield's action on several grounds, all of which we find persuasive. First, the court correctly ruled that to the extent Mr. Brownfield was seeking to challenge the execution of his Kansas sentence, he needed to proceed on a petition for a writ of habeas corpus under 28 U.S.C. § 2241, after first exhausting available state court remedies. *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir.2000); *Bradshaw v. Story*, 86 F.3d 164, 166-67 (10th Cir.1996). Likewise, to the extent Mr. Brownfield sought to challenge the validity of his sentence based on new evidence which allegedly proved defendants conspired to mislead and defraud him about his return to Oklahoma to serve his sentences concurrently, such a claim should be raised in a writ for habeas corpus under 28 U.S.C. § 2254, assuming Mr. Brownfield first receives permission from this court to file a successive § 2254 petition. *See* 28 U.S.C. § 2244(a)(b)(3)(A).

****2** [3][4] The district court also rejected Mr. Brownfield's claims that his rights were being violated under the Kansas Agreement on Detainers Act, KAN. STAT. ANN. § 22-4401, and the Uniform Criminal Extradition Act, KAN. STAT. ANN. § 22-2701, *et seq.* The Kansas Agreement on Detainers Act applies to "detainers based on untried indictments, informations or complaints." KAN. STAT. ANN. § 22-4401. Here, while the state of Oklahoma did issue a detainer for Mr. Brownfield, it was for his arrest and return as an escapee to resume the service of his Oklahoma sentence, not a detainer for any untried indictments, informations or complaints against him. Nor does Mr. Brownfield's reliance on KAN. STAT. ANN. § 21-4608(8) (Supp.1985), support his argument that Kansas was

required, pursuant to the Detainers Act, to relinquish him to Oklahoma so that he could serve his sentences concurrently in that state. Section 21-4608(8) speaks in permissive as opposed to mandatory terms regarding Kansas' obligation return a defendant sentenced in its state courts to the custody of another jurisdiction so that the defendant can serve his sentence in that jurisdiction concurrent with his Kansas sentence.

[5] Similarly, the district court correctly determined the Kansas' Uniform Criminal Extradition Act, KAN. STAT. ANN. § 22-2701, *et seq.*, does not apply here. Mr. Brownfield does not have a constitutional right to compel his return to Oklahoma by virtue of Kansas' extradition act. *Aycox v. Lytle*, 196 F.3d 1174, 1178 (10th Cir.1999) (defendant does not have constitutional right to compel own extradition). Mr. Brownfield has also failed to proffer any evidence that Oklahoma made an executive demand to the governor of Kansas for his return to Oklahoma, which is required by the statute. KAN. STAT. ANN. § 22-2702. *See also Ortega v. City of Kansas City, Kansas*, 875 F.2d 1497, 1499 (10th Cir.1989) ("constitutional dimension of extradition exists only when demand is made by one jurisdiction for the surrender of a person in another jurisdiction"). Hence, the district court did not err in rejecting Mr. Brownfield's detainer and extradition act arguments.

[6] Finally, the district court properly determined it was unable to provide Mr. Brownfield with the relief he seeks. The court could not give Mr. Brownfield mandamus relief, as it possesses no jurisdiction ***127** to order Kansas officials to release Mr. Brownfield to Oklahoma authorities. *See* 28 U.S.C. § 1361 ("The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."(emphasis added)); *Haggard v. Tennessee*, 421 F.2d 1384, 1386 (6th Cir.1970) ("federal courts have no authority to issue writs of manda-

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mus to direct state courts or their judicial officers in the performance of their duties"). With respect to damages, absent a showing that Mr. Brownfield's continued Kansas confinement has been overturned by a state tribunal or executive order, or called into question by the issuance of a writ of habeas corpus, no colorable claim for damages under section 1983 can be stated. *Heck v. Humphrey*, 512 U.S. 477, 486-87, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994).

****3** Accordingly, we **AFFIRM** the district court's dismissal of Mr. Brownfield's section 1983 action.^{FN2}

FN2. In affirming the district court's dismissal, we note that this ruling counts as a "strike" under 28 U.S.C. § 1915(g). Furthermore, in light of our ruling, we do not address Mr. Brownfield's request for an *en banc* hearing.

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